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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/796,987	03/11/2004	Roland Ramin	08048.0047-00	4626
22852	7590	08/28/2006		EXAMINER
				JACKSON, MONIQUE R
			ART UNIT	PAPER NUMBER
			1773	

DATE MAILED: 08/28/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>
	10/796,987	RAMIN ET AL.
	<b>Examiner</b>	<b>Art Unit</b>
	Monique R. Jackson	1773

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

1)  Responsive to communication(s) filed on 13 June 2006.

2a)  This action is **FINAL**.                            2b)  This action is non-final.

3)  Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## **Disposition of Claims**

4)  Claim(s) 1-97 is/are pending in the application.  
4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.

5)  Claim(s) \_\_\_\_\_ is/are allowed.

6)  Claim(s) 1-35,38-81 and 83-97 is/are rejected.

7)  Claim(s) 36,37 and 82 is/are objected to.

8)  Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

9)  The specification is objected to by the Examiner.

10)  The drawing(s) filed on \_\_\_\_\_ is/are: a)  accepted or b)  objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)  The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

12)  Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a)  All    b)  Some \* c)  None of:  
1.  Certified copies of the priority documents have been received.  
2.  Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3.  Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

1)  Notice of References Cited (PTO-892)  
2)  Notice of Draftsperson's Patent Drawing Review (PTO-948)  
3)  Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_.  
4)  Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.  
5)  Notice of Informal Patent Application (PTO-152)  
6)  Other: \_\_\_\_\_.  
\_\_\_\_\_

## **DETAILED ACTION**

1. The amendment filed 6/13/06 has been entered. Claims 1-97 are pending in the application.
2. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

### ***Claim Rejections - 35 USC § 112***

3. Claims 9-14, 26-29 and 87 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention for the reasons recited in the prior office action. Though alternative expressions are permissive in the claims, they should be drafted in proper alternative format, i.e. “**selected from A, B or C**”; or in proper Markush claim format, i.e. “**selected from the group consisting of A, B and C**”. Considering the instant claims are not drafted in proper alternative format, it is unclear what is meant to be encompassed by the claims. It is noted that though “chosen from” may be an acceptable alternative format, instant claims 9, 12, and 26 do not recite this phrase. Further, Claim 87 recites the limitation “chosen from the group comprising dyes...and pulverulent compounds” and given the open transition term “comprising”, renders the claim indefinite since the term may include elements that are not listed or disclosed.

### ***Claim Rejections - 35 USC § 102***

4. Claims 1-18, 21-34, 88 (erroneously listed as 86 in prior action, obvious typographical error) and 93 are rejected under 35 U.S.C. 102(e) as being anticipated by Leacock et al (US 2003/0175255 A1) for the reasons recited in the prior office action and restated below.

Leacock et al teach a nail enamel or nail polish composition includes aluminum platelets and silicon dioxide particles, which silicon dioxide platelets are coated with a metal oxide to obtain an angle-dependent perceivable color shift in combination with a metallic or chrome-like background (Abstract.) Leacock et al also teach that the nail composition includes at least one organic solvent, at least one film forming substance, at least one plasticizer, at least one suspending agent, and at least one adhesion promoter; wherein disclosed suitable materials taught by Leacock et al read upon the instantly claimed texturizing agents and thickeners (Paragraph 0010, 0012, 0018, 0021.) The silicon dioxide platelet pigment is coated with one or more thin, transparent, or semitransparent reflecting layers of metal oxide, preferably titanium dioxide, tin oxide, ferric oxide or combinations thereof, is present in an amount ranging from about 0.5 to about 18wt% of the total composition, and has a particle size ranging from about 3 to about 60 microns (0010-0011, 0014.) The aluminum platelets are present in an amount ranging from about 0.03 to about 0.5 percent by weight of the total composition, and have a particle range from about 2 to about 26 microns (0011.) The composition may further include an additional color or pigment component or other cosmetically acceptable component selected from the group consisting of D&C colorants, FD&C colorants, inorganic pigments, organic pigments, mica, guanine, and mixtures thereof, wherein the amounts of any additional pigment component will depend on the shade desired and wherein pearls or micas having a particle size of less than 150 microns may also be included to further enhance the desired effect (0013, 0023.) Leacock et al teach that the film forming component, such as cellulose butyrate, polyurethanes, and mixtures thereof, is generally provided in an amount from about 5 to 40wt% of the total weight of the composition (0019.) Leacock et al teach that the nail composition is highly shelf

stable and promote a superior and aesthetically pleasing nail enamel for natural human or synthetic nails (0025.) Leacock et al further teach that nail compositions in general are formulated to provide hardness, gloss, resistance to cracking, fading, chipping, peeling, and resistance to water soaps, cleaning solutions and lotions; and that the nail enamel compositions should last for an extended period of time (0007.) Hence, Leacock et al teach nail enamel formulations that read upon the instantly claimed components and ranges.

5. Claims 1-16, 21-34, 71-78, 88, 90-93, and 95-97 are rejected under 35 U.S.C. 102(b) as being anticipated by Ramin et al (USPN 6,296,839 B1), for the reasons recited in the prior office action and restated below.

Ramin et al '839 teach a make-up nail varnish kit containing a first composition containing at least one film forming polymer and a second a composition comprising, in an organic solvent, at least one film-forming polymer, at least one metal pigment, at least one organopolysiloxane, and at least one pyrogenic silica; and a process for making up nails utilizing the nail varnish (Abstract.) The metal pigment has a mean particle size ranging from 5 to 150 microns, preferably 10 to 60 microns, and is present in an amount ranging from 0.1 to 25% by weight of the total composition (Col. 3, lines 52-67.) The metal pigment may be, for example, aluminum, copper, zinc, bronze, nickel powders, chromium powder, and equivalent powders (Col. 3, lines 45-49.) The film forming polymer may be chosen from radical polymers, polycondensates, and polymers of natural origin, and preferably comprises a mixture of 0.05 to 30wt% nitrocellulose and 0.05 to 30wt% cellulose ester of the base and/or surface compositions (Col. 4, lines 16-63.) The composition may also contain from 0.1 to 3% by weight of a clay, such as organo-modified bentonites, as well as additional agents provided in order to improve the

film-forming properties of the composition, such as plasticizing agents, and commonly used additives including thickening agents, anti-foaming agents, dyes, additional pigments, surfactants, moisturizing agents, fragrances, neutralizing agents, stabilizing agents and antioxidants in suitable amounts (Col. 6, line 41-Col. 7, line 24.)

6. Claims 1-35, 38-71, 88-90, and 93-95 are rejected under 35 U.S.C. 102(a) or (e) as being anticipated by Ramin et al (USPN 6,491,932; Ramin et al '932.) Ramin et al '932 teach a cosmetic nail varnish composition comprising, in a cosmetically acceptable medium, a dyestuff comprising glass particles coated with at least one metallic coat, providing a sparkling and wear-resistant metallic appearance, wherein the glass particles can be combined with at least one colored pigment in order to obtain colored make-up with a metallic effect (Abstract, Col. 1, lines 62-65.) Ramin et al '932 teach that nails coated with the composition exhibit a mirror effect and also have good wear resistance, in particular, resistance to impacts, rubbing and abrasion, as well as good resistance to chipping (Col. 1, lines 50-65.) The glass particles coated with the at least one metallic coat, such as silver, aluminum, chromium, nickel, gold, and copper, are present in the composition in an amount ranging from 0.1 to 90wt% relative to the total weight of the composition, preferably 1 to 30%; and have an average particle size ranging from 1 micron to 500 micron, and a thickness generally ranging from 0.1 to 25 microns (hence having a shape factor within the instantly claimed range; Col. 2, lines 7-42.) The composition further comprises at least one film-forming polymer, including synthetic polymer, radical polymers, natural polymers, and polycondensates, in an amount ranging from 1 to 70% by weight of the total composition (Col. 2, lines 43-55; Col. 5, lines 6-9.) Ramin et al '932 also teach that to improve film-forming properties of the composition, in particular of the base and/or surface composition

of the invention, at least one film-forming auxiliary agent may be provided, particularly plasticizers, and other additives may be incorporated including additional dyestuffs such as pigments, nacres, and flakes; thickeners, fillers, dispersants, antifoaming agents, stabilizers, antioxidants, and fragrances, in suitable amounts (Col. 5, lines 48-Col. 6, line 18.) Ramin et al '932 further teach specific examples that read upon the instantly claimed composition (Examples 1-5.).

***Claim Rejections - 35 USC § 103***

7. Claims 19-20, 71-79, 90, 91, 92, and 95-97 are rejected under 35 U.S.C. 103(a) as being unpatentable over Leacock et al for the reasons generally recited in the prior office action wherein the Examiner maintains her position that a multicomponent kit would have been obvious given the art (as evidenced by Ramin '839), that any shape factor would have been obvious based on the desired aesthetic properties for a particular end use, and that one skilled in the art would have been motivated to exclude the coated silicone oxide particles based on desired aesthetic properties particular since Leacock specifically teach that these particles are provided for aesthetic purposes.

8. Claims 17-20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ramin et al '839 for the reasons recited in the prior office action and maintains her position that any particle shape would have been obvious based on the desired aesthetic properties for a particular end use, wherein flat particles are an obvious shape utilized in the art (as evidenced by Leacock et al.)

9. Claims 72-81, 83-87, 91, 92, 96, and 97 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ramin et al '932 for the reasons recited in the prior office action wherein the

Examiner maintains her position that a multicomponent kit would have been obvious given the art (as evidenced by Ramin '839.)

***Allowable Subject Matter***

10. Claims 36, 37 and 82 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

***Response to Arguments***

11. Applicant's arguments filed 6/13/06 have been fully considered but they are not persuasive. With regards to the anticipation rejections, the Applicant argues that the three references do not teach the claimed range of "texturing agent" in sufficient specificity to anticipate the claims. The Examiner respectfully disagrees. The Examiner first notes that the references clearly teach values or endpoints for at least one component that fall within the claimed range and considering the Applicant has not provided any showing of unexpected results with regards to the "narrower" range, the Examiner takes the position that the references do teach the claimed invention with sufficient specificity given the lower endpoints that are less than the claimed amount. Further, the Examiner notes that though the references may teach several components that may all read on the Applicant's term "texturing agent", the instant claims are drafted in open claim language and hence do not exclude the incorporation of other materials whether they read upon the term "texturing agent" or not. As recited the claims state that the composition comprises "at least one texturing agent in an amount of", they do not recite that all materials that the Applicant believes are "texturing agents" are included in no more than 10 weight percent. With respect to the aesthetic properties, the Examiner maintains her position.

Lastly, with respect to the kit, the Examiner refers to Ramin '839 and upon request, can provide numerous other supporting references with regards to the obviousness of a commercial nail polish kit.

**12. THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Monique R. Jackson whose telephone number is 571-272-1508. The examiner can normally be reached on Mondays-Thursdays, 8:00AM-4:30PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Carol Chaney can be reached on 571-272-1284. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.



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August 21, 2006